

CHADWICK SMITH, NELSON SMITH,	:	Order Dismissing Docket
JOE GRAYSON, JR., and	:	No. IBIA 91-59-A and Granting
PAM THURMAN JUMPER,	:	Intervenor Status to Nelson Smith
Appellants	:	in Docket No. IBIA 91-60-A
	:	
v.	:	
	:	Docket Nos. IBIA 91-59-A
MUSKOGEE AREA DIRECTOR,	:	IBIA 91-60-A
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 1, 1991

On March 22, 1991, the Board of Indian Appeals (Board) received a notice of appeal that had been filed with the Assistant Secretary - Indian Affairs by appellants Chadwick Smith, Nelson Smith, Joe Grayson, Jr., and Pam Thurman Jumper. The notice of appeal was forwarded to the Board by the Office of the Assistant Secretary. Appellants seek review of a February 11, 1991, decision of the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning a November 5, 1990, election held by the United Keetoowah Band of Cherokee Indians in Oklahoma in accordance with a September 16, 1990, tribal ordinance affecting tribal membership for voting and candidacy purposes.

By order dated March 25, 1991, the Board acknowledged receipt of the notice of appeal and stated that it appeared the notice might be untimely and appellants might lack standing. Appellants were given an opportunity to show cause why their appeal should not be dismissed.

Appellants' response to the show-cause order was received on April 29, 1991. The response indicates that appellants Nelson Smith, Joe Grayson, Jr., and Pam Thurman Jumper were candidates for tribal offices during the November 5, 1990, election. It further appears that Nelson Smith was informed that he would not be certified as a candidate unless he relinquished his membership in the Cherokee Nation in accordance with the September 16, 1990, tribal ordinance. Appellant Chadwick Smith is not shown to have been a candidate for tribal office in the November election.

Based upon appellants' response, it appears that appellant Nelson Smith had standing to bring an appeal from the Area Director's February 11, 1991, decision. See Sundberg v. Acting Sacramento Area Director, 18 IBIA 207 (1990); LeBeau v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 84 (1986). It further appears that appellants Joe Grayson, Jr., and Pam Thurman may have standing; and that appellant Chadwick Smith lacks standing, but, as an attorney, could have represented the remaining individuals.

However, appellants failed to file a timely notice of appeal. The Area Director's February 11 decision, which appellants admit receiving, states that an appeal from that decision was to be filed with the Board, with a copy to the Assistant Secretary. Appellants chose to file their appeal directly with the Assistant Secretary. Although the Assistant Secretary forwarded the appeal to the Board, it was not received timely. Appellants were clearly informed of the proper appeal procedures. Under these circumstances, they must bear the consequences of filing their notice of appeal in the incorrect office. See, e.g., Maynard v. Acting Assistant Aberdeen Area Director, Indian Programs, 19 IBIA 273 (1991), and cases cited therein.

As the Board noted in its show-cause order, another appeal from the Area Director's February 11, 1991, decision is presently pending before it as United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, Docket No. IBIA 91-60-A. Appellant Nelson Smith is hereby granted intervenor status in that appeal. Appellants Joe Grayson, Jr., Pam Thurman Jumper, and Chadwick Smith would need to show additional proof of standing in order to be granted intervenor status.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Muskogee Area Director's February 11, 1991, decision is dismissed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge